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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,338	04/07/2004	Sean Christopher Endler	81486 7114	8133

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EXAMINER	
DANIELS, ANTHONY J	

ART UNIT	PAPER NUMBER
2622	

MAIL DATE	DELIVERY MODE
10/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/820,338	ENDLER ET AL.	
	Examiner	Art Unit	
	ANTHONY J. DANIELS	2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 September 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/12/2008 has been entered.

Response to Amendment

1. Applicant's amendment to the independent claims ("streaming the content in real-time while being captured") does not overcome the Franken et al. reference. Franken et al. discloses that the video programs stored by the video recorder are those that are delivered in a manner other than real-time. The video programs for which a determination of highest viewership is made and are ranked are live programs.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 19 and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

See Office Action dated 5/20/2008 and the Advisory Action dated 8/12/2008 for reasoning behind the rejection.

Claim Rejections - 35 USC § 103

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-6 and 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900).

As to claim **1**, Franken et al. teaches a method of displaying (Figure 1, TV "102") and rating content (Col. 3, Lines 47-50, "...these programs are ranked...") comprising: receiving content (Col. 2, Lines 43-46), the content receiving step comprising streaming the content in

real-time for viewing while being captured (Col. 2, Lines 43-46, "…provides live digital television service…"); creating profile information associated with the content (Col. 3, Lines 5-7); showing the content on a display device (Col. 3, Lines 39-42); and updating the profile information associated with the content to reflect viewer information (Col. 3, Lines 44-47; *{The ranking is part of the profile information.}*). The claim differs from Franken et al. in that it further requires that a vote, reflecting the quality of the content, is received on the content and that the profile information is updated according to the vote.

In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

As to claim **2**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 further comprising storing the profile information associated with the content within a storage device (see Franken et al., Col. 3, Lines 51-55; *{It is inherent that the personal computer or other processor stores the program names and the ranking.}*).

As to claim **3**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 further comprising capturing the content with a content capturing device (*The television shows are captured by a video camera or the like.*).

As to claims **4-6**, Although Franken et al. does not state it explicitly, **Official Notice** is taken that capturing content, particularly television programs, using a digital video camera that also records the audio associated with the video is a well known concept in the art. One of ordinary skill in the art would recognize the numerous advantages of capturing content with digital video cameras.

As to claim **8**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein receiving the content occurs in real time relative to capturing the content (see Franken et al., Col. 2, Lines 42-48, "…**live** video programming…").

As to claim **9**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein the content is video footage (see Franken et al., Col. 2, Lines 42-48, "…**live** video programming…").

As to claim **10**, Franken, as modified by Zilliacus, teaches the method according to claim 1 wherein the content is a digital image (*See Official Notice statement for claims 4-6*).

As to claim **11**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein the content is audio data (*See Official Notice statement for claims 4-6*).

As to claim **12**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein a rating value is determined for the content based on the vote (see Franken et al., Col. 3, Lines 47-50).

As to claim **13**, Franken et al., as modified by Zilliacus, teaches the method according to claim 12 further comprising comparing the rating value with a predetermined value rating threshold (see Franken et al., Col. 4, Lines 21-30).

As to claim **14**, Franken et al., as modified by Zilliacus, teaches the method according to claim 13 further comprising selectively displaying the content based on comparing the rating value (see Franken et al., Col. 4, Lines 21-30).

As to claim **15**, Franken et al., as modified by Zilliacus, teaches a system for displaying (Figure 1, TV "102") and rating content (Col. 3, Lines 47-50, "…these programs are ranked…") comprising: means for receiving content (Col. 2, Lines 43-46), the content streaming in real-time for viewing while being captured (Col. 2, Lines 43-46, "…provides live digital television service…"); means for creating profile information associated with the content (Col. 3, Lines 5-7); means for showing the content on a display device (Col. 3, Lines 39-42); and means for updating the profile information associated with the content to reflect the viewer information (Col. 3, Lines 44-47). The claim differs from Franken et al. in that it further requires means for receiving a vote that reflects the quality of the content and that the profile information is updated according to the vote.

In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

2. Claims 7,16,17 and 20-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900) and further in view of Peliotis et al. (US 2002/0065678).

As to claim 7, Franken et al., as modified by Zilliacus, teaches the method according to claim 1. The claim differs from Franken et al., as modified by Zilliacus, in that it further requires the step of identifying the content from multiple pieces of content.

In the same field of endeavor, Peliotis teaches method of selecting and excluding video segments in a video stream to be viewed by a viewer comprising: placing markers in the video stream that indicate the position of a division between the video segments of the video stream; placing tags in the video stream that indicate content of each video stream; using video preference information of the viewer to select and exclude video segments by comparing the tags with the video preference information of the viewer; inserting alternate video segments that replace video segments that have been excluded by the viewer ([0008]). The markers are therefore used to identify a separate piece of video segment or content within the video stream or multiple pieces of content, and the tags are used to describe the individual contents.
In light of the teaching of Peliotis et al., it would have been obvious to one of ordinary skill in the art to include the content identification step in the system of Franken et al., as modified by Zilliacus, because an artisan of ordinary skill in the art would recognize that this would allow the viewer the ability to select video segments based on content ([0006]) so that they would not have to view content that is not desired to be viewed, but rather focus on content that the viewer desires ([0005]).

As to claim **16**, Franken et al. teaches a method of displaying (Figure 1, TV "102") and rating content (Col. 3, Lines 47-50, "…these programs are ranked…"), comprising the steps of: receiving content (Col. 2, Lines 43-46), the content streaming in real-time for viewing while being captured (Col. 2, Lines 43-46, "…provides live digital television service…"); creating profile information associated with content (Col. 3, Lines 5-7); showing the content to a plurality of viewers (Col. 3, Lines 42-44); receiving viewer information on the content from each of the plurality of viewers (Col. 3, Lines 43-47, "…viewership information…"); determining a rating value for the content based on viewer information (Col. 3, Lines 47-50, "…ranking…"); and displaying the content to the plurality of viewers based on the rating value of the content (Col. 4, Lines 21-26; *{See arguments above.}*). The claim differs from Franken et al. in that it further requires the steps of identifying the content (1), receiving a vote reflecting the quality of the content from a plurality of viewers (2).

(1) In the same field of endeavor, Peliotis teaches method of selecting and excluding video segments in a video stream to be viewed by a viewer comprising: placing markers in the video stream that indicate the position of a division between the video segments of the video stream; placing tags in the video stream that indicate content of each video stream; using video preference information of the viewer to select and exclude video segments by comparing the tags with the video preference information of the viewer; inserting alternate video segments that replace video segments that have been excluded by the viewer ([0008]). The markers are therefore used to identify a separate piece of video segment or content within the video stream or multiple pieces of content, and the tags are used to describe the individual contents.

In light of the teaching of Peliotis et al., it would have been obvious to one of ordinary skill in the art to include the content identification step in the system of Franken et al., as modified by Zilliacus, because an artisan of ordinary skill in the art would recognize that this would allow the viewer the ability to select video segments based on content ([0006]) so that they would not have to view content that is not desired to be viewed, but rather focus on content that the viewer desires ([0005]).

(2) In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

As to claim **17**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to claim 16 further comprising updating the profile information associated with the content to reflect the rating value (see Franken et al., Col. 3, Lines 44-47; *{The ranking is part of the profile information.}*).

As to claim **20**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to claim 16 further comprising storing the profile information (see Franken et al., Col. 3, Lines 51-55; *{It is inherent that the personal computer or other processor stores the program names and the ranking.}*).

As to claim **21**, Franken et al. teaches a device for displaying (Figure 1, TV "102") and rating content (Col. 3, Lines 47-50, "…these programs are ranked…"), comprising: a content identification module to detect content (see claim 16 above), the content streaming in real-time for viewing while being captured (Col. 2, Lines 43-46, "…provides live digital television service…"); a storage module to store the content (Figure 1, video recorder "116") and profile information associated with the content (see claim 20 above); an interface module for receiving the content and transmitting the content based on the profile information corresponding to the content (Col. 2, Lines 41-43); and a content rating module that receives a rating value from a viewer for the content and updates the profile information associated with the content (see claim 17 above).

As to claim **22**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 wherein the content includes one of a video footage (see Franken et al., Col. 2, Lines 42-46), digital image, and audio data.

As to claim **23**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 further comprising a rendering module for formatting the content to be displayed to the viewer (see Franken et al., Figure 1, video recorder "116"; Col. 5, Lines 36-40, "…compressed…").

As to claim **24**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 further comprising a rendering module for selectively formatting the content for display to the viewer based on the rating value associated with the content (see Franken et al., Col. 5, Lines 36-40, "…compressed…").

As to claim **25**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches a computer-readable medium having computer executable instructions (see Franken et al., Figure 1) for performing a method comprising: identifying content, the content identifying step comprising streaming in real-time for viewing while being captured; creating profile information associated with content; showing the content to a plurality of viewers; receiving a vote on the content from each of the plurality of viewers; determining a rating value for the content based on the vote; and displaying the content to the plurality of viewers based on the rating value of the content. *See claim 16 above.*

As to claim **26**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to Claim 1, further comprising the steps of: storing the profile information associated with the content within a storage device (see claim 20 above); capturing the content with a content capturing device (see claim 3 above); identifying the content from multiple pieces of content (see claim 16 above); comparing the rating value with a predetermined value rating threshold; and selectively displaying the content based on the comparing the rating value (see claims 13 and 14 above), wherein the content capturing device comprises at least one element selected from a group consisting essentially of a digital camera and an audio recorder (see claims 4-6 above), wherein receiving the content occurs in real time relative to capturing the content (see claim 21 above), wherein the content comprises at least one element selected from a group consisting essentially of video footage (see claim 22 above), a digital image, and audio data, and wherein a rating value is determined for the content based on the vote (see claim 21 above).

As to claim **28**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to Claim 21, further comprising: a rendering module for formatting the content

to be displayed to the viewer; and a rendering module for selectively formatting the content for display to the viewer based on the rating value associated with the content (see claims 23 and 24 above), wherein the content comprises at least one element selected from a group consisting essentially of video footage (see claim 22 above), a digital image, and audio data.

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900) in view of Peliotis et al. (US 2002/0065678) and further in view of Lautzenheiser et al. (US # 7,054,827).

As to claim **18**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to claim 16. The claim differs from Franken et al., as modified by Zilliacus and Peliotis et al., in that it further requires the step of checking for a number of viewers submitting the vote.

In the same field of endeavor, Lautzenheiser teaches a method and apparatus for validating a survey database and identifying portions of the survey database that are potentially problematic with the idea of checking the number of responses for selected answers in the survey database to ensure that corresponding user requests are based on a statistically significant sample size, or the user is notified otherwise (Col. 32, Lines 7-11; *{The number of responses for selected answers is the same as the number of viewers submitting the vote.}*). In light of the teaching of Lautzenheiser, it would have been obvious to one of ordinary skill in the art to include survey database validation scheme in the system of Franken et al., as modified by Zilliacus and Peliotis et al., because an artisan of ordinary skill in the art would recognize that this would prevent the

results from being misleading when results may be based on a statistically insignificant sample size, thereby misleading the user (Col. 2, Lines 17-20).

Conclusion

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY J. DANIELS whose telephone number is (571)272-7362. The examiner can normally be reached on 8:00 A.M. - 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AD
10/14/2008

/Lin Ye/

Supervisory Patent Examiner, Art Unit 2622